

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF WISCONSIN, *et al.*,

Petitioners,

v.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and
Regina A. McCarthy, Administrator, United
States Environmental Protection Agency**

Respondents.

**STATE OF TEXAS and the
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

Petitioners,

v.

**UNITED STATES ENRIRONMENTAL
AGENCY,**

Respondent.

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) **No. 16-1406 and**
) **Consolidated Cases**

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) **No 16-1428**

PETITIONERS’ NON-BINDING STATEMENT OF ISSUES

Petitioners, the State of Texas, and the Texas Commission on Environmental Quality, challenge the legality of the United States Environmental Protection Agency (“EPA”) rulemaking entitled “Cross-State Air Pollution Rule Update for the

2008 Ozone NAAQS; Final Rule,” published at 81 Fed. Reg. 74,504 (October 26, 2016) (“Final Rule”), and respectfully submit this preliminary and non-binding statement of issues:

1. The Final Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because the EPA failed to give independent significance to the distinct and separate requirements of Section 110(a)(2)(D)(i)(I) of the Clean Air Act, 42 U.S.C. § 7410(a)(2)(D)(i)(I).

2. The Final Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law because the EPA proposed a federal implementation plan for States before the EPA acted on state implementation plans, which States, such as Texas, previously submitted to implement § 7410(a)(2)(D)(i)(I).

3. The Final Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the CAA because the EPA fails to properly consider actual monitoring data and trends, and impermissibly relies on a model that is flawed with inappropriate assumptions and conditions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure, I hereby certify that on January 23, 2017, I served the foregoing document on all registered counsel in this case, and all consolidated cases, through the Court's CM/ECF system.

/s/ Craig J. Pritzlaff

CRAIG J. PRITZLAFF